



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on February 16, 2022

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0036

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Tampa Cargo S.A.S. d/b/a Avianca Cargo (Tampa)**

Dates Filed: March 26, 2020, and December 21, 2021

Relief requested: Grant of application filed December 21, 2021, for exemption under 49 U.S.C. § 40109 to engage in, for a period of two years, scheduled and charter foreign air transportation of property and mail between the United States and any point or points. Grant of motion to withdraw application filed March 26, 2020.¹

Applicant representatives: David M. Endersbee & Barbara M. Marrin (202) 298-8660

DOT Analyst: Shelita A. Johnson (202) 366-1226

Responsive pleadings: None filed.²

DISPOSITION

Action: Granted (see remarks below)

Action date: February 16, 2022

Effective dates of exemption authority granted: February 16, 2022 – February 16, 2024

Basis for approval (bilateral agreement/reciprocity): U.S.-Colombia Air Transport Agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

 X Standard exemption conditions (attached) X Foreign air carrier permit (Order 2012-11-31)

Special conditions/Remarks: We are granting the applicant's April 23, 2021, motion to dismiss its March 26, 2020, application. In addition, we are granting its December 21, 2021, request for exemption authority.

With respect to Tampa's current ownership and control structure, according to Tampa's December 21, 2021 application, Tampa's ultimate corporate owner is now Avianca Group International Limited, a private limited company organized under the laws of England and Wales. The application states further that by letter dated December 6, 2021, the Department provided a waiver of its ownership and control standards for Tampa, finding that there was nothing in its ownership and control which would be inimical to U.S. aviation policy or interests.³

Action taken by: Benjamin J. Taylor, Director
Office of International Aviation

¹ Tampa notes that it initially filed an application for this authority on March 26, 2020, but subsequently filed a motion to withdraw that original application on April 23, 2021. Tampa states that withdrawal was necessary due to the need for a new application following changes in the ownership structure of applicant's parent after its emergence from Chapter 11. Tampa requests that in granting its subsequent December 21, 2021, application, the Department also grant its motion to withdraw its original application. As explained below, in this action we are granting both Tampa's motion and its December 21, 2021, application for exemption authority.

² We note that Atlas Air Inc. (Atlas) filed an objection to the Tampa's March 26, 2020, application we are dismissing here. However, Tampa's December 21, 2021, application is uncontested by Atlas and all other served parties.

³ December 21, 2021 Application, at 3.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant is qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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Foreign Air Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.